He continued:—

"In particular, I would remind you that you have a wide discretionary power to disqualify in cases where the statute itself does not make disqualification automatic."

He went on to say:—

"It has been suggested from time to time in debates both in the House of Lords and in the House of Commons, that this is a power which Magistrates might usefully employ more frequently, since it is disqualification which the motorist fears rather than a fine. Disqualification serves a double purpose, in that it is firstly, the punishment most feared by the motorist and therefore the most effective deterrent, and, secondly, it keeps the careless or dangerous driver off the road for a period and does that practical amount of good."

These are not my words. They are the words of a Lord Chancellor of England. I venture to commend them to Magistrates for their careful consideration and attention.

The conviction and sentence in this case is confirmed but there will be added an order endorsing the licence of the respondent and by virtue of the provisions of the Road Traffic Ordinance Section 32(6) notice of the endorsement of the defendant's licence must be sent by the Court to the Registrar of Motor Vehicles by whom the driving licence was granted.

Conviction confirmed.
Order to indorse the licence.

CHOW SAI LET v. PUBLIC PROSECUTOR

[A. Cr. J. (Smith J.) May 2, 1960]

[Ipoh — Criminal Appeal No. 19 of 1960]

Road Traffic offence — Plea of guilty by post — When acceptable — Road Traffic Ordinance, 1958, ss.74(2) and 147(3).

A person accused of an offence under the Road Traffic Ordinance may plead guilty by post even though the offence has not been prescribed under sub-section (3) of section 147 of the Road Traffic Ordinance as compoundable provided that the punishment for the offence is one of fine only or of imprisonment not exceeding three months.

Disqualification for holding a driving licence is as much a punishment as fine or imprisonment. The Court has no power to accept a plea of guilty by post in respect of an offence punishable under sub-section (2) of section 74 of the Road Traffic Ordinance because the offence is not punishable by fine only or by imprisonment not exceeding three months; it is also punishable by a period of disqualification for holding or obtaining a driving licence.

MAGISTRATE'S CRIMINAL APPEAL.

D. R. Seenivasagam for the appellant.

Abdul Hamid (Deputy Public Prosecutor) for the respondent.

Smith J.: The appellant was charged first with carrying goods without a haulage permit an offence punishable under regulation 7 of the Motor Vehicles Commercial Use Regulations (GN. 30/45), and secondly with driving a vehicle without a policy of insurance in respect of third party risks an offence under sub-section 1 and punishable under sub-section 2 of section 74 of the Road Traffic Ordinance, 1958.

The appellant pleaded guilty to the two offences by letter and was fined $75 on each charge; and in respect of the second charge was disqualified for holding or obtaining a driving licence for a period of twelve months from the date of the conviction. The appellant has appealed against both his conviction and his sentence.

Neither of these offences has been prescribed by the Minister charged with the responsibility for transport as an offence which may be compounded (see section 147) and therefore by virtue of the provisions of sub-section 2 of section 146 there is no provision under the Road Traffic Ordinance for the offender to plead guilty by registered post.

The jurisdiction to accept a plea of guilty by post, if it exists at all, must be by virtue of section 137(ii) of the Criminal Procedure Code which reads:

"In any case relating to an offence punishable by fine only or by imprisonment not exceeding three months and in which a Magistrate has issued a summons, an accused person desiring to plead guilty and be convicted and sentenced in his absence may appear by advocate, or may by letter addressed to the Magistrate plead guilty and submit to pay any fine which may be imposed in respect of such offence and the Magistrate may thereupon record a plea of guilty and convict him according to law, and may sentence him to a fine with or without a sentence of imprisonment in default of payment of such fine."

It has been argued by the Deputy Public Prosecutor that section 137(ii) of the Criminal Procedure Code has no application to offences under the Road Traffic Ordinance since there exists in the Road Traffic Ordinance in sections 146 and 147 special provision for pleading guilty by post to offences against the Ordinance. I find myself unable to agree with this argument. There is nothing in the Road Traffic Ordinance which expressly excludes the operation of section 137(ii) of the Criminal Procedure Code. Indeed, what section 147 of the Road Traffic Ordinance appears to do is to enable the Minister to increase the offences in respect of which the facility of pleading guilty by post already exists under section 137(ii) of the Criminal Procedure Code. There is nothing in the Criminal Procedure Code which says that where provision is made in any Ordinance for a plea of guilty to be made by post then the provisions of section 137(ii) of the Criminal Procedure Code shall not apply. Since pleading guilty by post is an entirely optional course and therefore in the interests of the subject I cannot see that one can read into the Road Traffic Ordinance any implied repeal of section 137(ii) in so far as the right to plead guilty to road traffic offences is concerned. I am therefore satisfied that even though an offence under the Road Traffic Ordinance has not been prescribed under sub-section 3 of section 147 as compoundable nevertheless a plea of guilty may be made by post provided that the punishment for the offence is one of fine only or of imprisonment not exceeding three months.

In so far as the first offence is concerned the punishment prescribed is a fine not exceeding $1,000 or imprisonment for a term not exceeding one year or to both such fine and imprisonment. Since the term of imprisonment prescribed exceeds three months the Magistrate had no power to accept a plea of guilty by post and therefore the conviction on the first charge must be quashed and the charge remitted to the Magistrate to take the plea of the appellant in person.

In so far as the second offence is concerned the penalties therefor are set out in sub-section 2 of section 74 of the Road Traffic Ordinance which reads as follows:

"If a person acts in contravention of this section, he shall be liable to imprisonment for a term not exceeding three months or to a fine not exceeding one thousand dollars or to both such imprisonment and fine, and a person convicted of an offence under this section shall, unless the court for special reasons to be specified in the order thinks fit to order otherwise and without prejudice to the power of the court to order a longer period of disqualification, be disqualified for holding or obtaining a driving licence under Part II of this Ordinance for a period of twelve months from the date of the conviction."

In so far as the fine and the imprisonment are concerned neither are outside the limits imposed by sub-section (ii) of section 137 of the Criminal Procedure Code. The offence, however, does include an automatic disqualification for holding a driving licence unless special reasons are found to exist. In this particular case there was a definite order of the Court for disqualification. Under sub-section (ii) of section 137 of the Criminal Procedure Code the Magistrate had power to sentence to a fine or imprisonment in default of payment of fine; he had under that sub-section no power to order a period of disqualification.

I have been unable to find any definition of the expression "punishable". It appears to me, however, to be a matter of common sense that disqualification for holding a driving licence is as much a punishment as fine or imprisonment. (It will be noted that I am not ruling whether or not endorsement of a licence is in any way a punishment). I am therefore satisfied that the Magistrate had no power to accept a plea of guilty by post in respect of an offence punishable under sub-section 2 of section 74 of the Road Traffic Ordinance because the offence was not punishable by fine only or by imprisonment not exceeding three months; it was also punishable by a period of disqualification for holding or obtaining a driving licence. Therefore in respect of the second charge also the conviction must be quashed and the charge remitted to the Magistrate to take the appellant's plea in person.

Appeal allowed. Convictions, sentences and consequential order quashed. Both charges remitted to the Magistrate, not necessarily the same, for retrial.

Appeal allowed.

Solicitors: *S. Seenivasagam & Sons.*

ALBAKHAR v. PUBLIC PROSECUTOR

[A. C. J. (Rigby J.) May 4, 1960]

[Alor Star — Kedah Criminal Appeal No. 21 of 1960]

Criminal Law — Penal Code, s.411 — Dishonestly retaining stolen property — Proof of possession.

This was an appeal against the conviction of the appellant on a charge of dishonestly retaining stolen property to wit, orchid plants. The only evidence of possession of the orchids which were proved to be stolen property against the appellant was that they were found in a house which the appellant occupied with the other members of his family. There was no evidence to show how they got there or when or by whom they were taken.

Held: the evidence was insufficient to show that the appellant had possession of the stolen property and he should not have been called upon to enter upon his defence.

Case referred to:—

(1) *Soo Sing* v. *Public Prosecutor* [1951] M.L.J. 143.

MAGISTRATE'S CRIMINAL APPEAL.

Chang Min Tat for the appellant.

Abdul Kadir bin Yusoff (Deputy Public Prosecutor) for the respondent.

Rigby J.: I allowed this appeal stating at the time my reasons for so doing. In deference to the learned Magistrate who tried the case and, indeed, in compliance with the provisions of section 319 of the Criminal Procedure Code, I now state in writing the grounds upon which the appeal was allowed.

The appellant, an 18 year old student, was convicted of dishonestly retaining stolen property, to wit, 7 plants of orchids which he knew, or had reason to believe, was stolen property, contrary to section 411 of the Penal Code.

For the prosecution to succeed it was necessary to prove:—

(1) that the orchids had been stolen; and
(2) that the appellant retained them knowing or having reason to believe that they had been stolen.

The first ingredient provided no real difficulty. Two witnesses, father and son, gave evidence. The son stated that on the evening of the 23rd October, 1959, he attended as usual to his father's orchids, and at 7 a.m. on the following morning he found more than 50 plants missing. On the 8th November, 1959, he was called to the police station, where he was shown a number of orchid plants. He identified 3 of those plants as part of the stolen orchids saying that those 3 plants had been given to him by his father. The father was also called to the police station. He lived with his son on the same premises from which the orchids had been stolen, but was away from his house on the night or early morning on which they were stolen. At the police station he was shown 19 pots of orchids. He purported to identify 17 of these pots, including the 3 already identified by his son, as part of the stolen property.

It was then necessary to prove that the stolen orchids, or part of them, were found in the possession of the appellant and that he had